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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,208	11/18/2003	Theresa N. Powless	1791-000001	4843

27572 7590 11/05/2004

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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/716,208

Applicant(s)POWLESS, THERESA N. **Examiner**

Son T. Nguyen

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12 and 13 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10, 12 and 13 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-10,12,13** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3273841 (herein 841) in view of US 2803418 (herein 418).

For claim 1, 841 teaches a method for preventing tipping of a flower pot formed of an open top container 16 having a generally vertical wall formed with an upper edge portion and having a substantially closed bottom for resting the pot upon the ground in an area where the pot may be subjected to lateral forces, which can tip the pot, comprising:

providing a retainer 18,35 formed in the shape of a vertically-elongated, stem portion 18 and with the stem portion having an upper end 35 to form a downwardly opening, inverted V-shaped hook portion (see fig. 7); with the hook portion having one leg formed by the stem portion (at ref. 18) and having a short leg (at ref. 35) for extending downwardly adjacent the stem portion, with the leg portions being spread apart for holding the wall upper edge portion between them while the short leg may extend downwardly into the pot and into any potting material contained in the pot while the long leg extends downwardly and outwardly relative to the pot to extend into the ground (at ref. 14);

engaging the hook portion over the upper edge portion of the pot with and extending the rod downwardly from the hook portion closely adjacent to the outside surface of the pot wall and pushing the stem portion into the ground a sufficient distance to hold the pot against tipping (as shown in figs. 1 and 7).

However, 841 is silent about the retainer being of a thin, bendable, but relatively stiff wire rod, the upper end of a stem portion being bent downwardly into a hairpin-like formation, and the upper end of the stem portion forming an inverted U-shaped hook portion.

418 teaches a method for preventing tipping of a flower pot C comprising providing a retainer A of a thin, bendable, but relatively stiff wire rod (col. 2, lines 7-12); stem portion 12 having an upper end 26,28,24 being bent downwardly into a hairpin-like formation (see fig. 3), and the upper end of the stem portion forming an inverted U-shaped hook portion (see fig. 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ thin, bendable, but relatively stiff wire rod as taught by 418 for the preferred material for the retainer of 841, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to bend the upper end of the stem portion of the retainer of 841 in a downwardly hairpin-like formation making an inverted U-shaped hook portion as taught by 418 in order to better contour the upper rim area of the container and thus provide a better hold on the container.

For claim 2, 841 as modified by 418 further teaches the wire rod being formed of a relatively resilient wire material (col. 2, lines 7-12 of 418), and arranging the hook portion to receive and resiliently grab the upper edge portion of the pot wall between the legs (both 841 and 418 teach).

For claim 3, in addition to the above, 418 further teaches including providing a second retainer 20,24,22,13, similar in shape to said first mentioned retainer (see fig. 2), and engaging the hook portion of the second retainer with the upper portion of the pot wall at a location spaced from the first mentioned retainer for holding the pot in a fixed position upon the ground at spaced-apart locations. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a similar second retainer spaced from the first retainer as taught by 418 in the method of 841 in order to further secure the pot down.

For claim 4, 841 as modified by 418 further teaches wherein said pot has a downwardly tapered wall, and including arranging the stem closely adjacent to the side wall of the pot, at an angle corresponding to the angle of the pot wall. Both 841 and 418 teach the claimed limitation as shown in fig. 7 of 841 and fig. 2 of 418, the stem hugging closely to the side wall of the pot.

For claim 5, 841 as modified by 418 (emphasis on 841) further teaches pushing the stem portion into the ground. However, 841 as modified by 418 lacks pushing said short leg downwardly into potting material contained in the pot when engaging the hook portion over the upper edge portion of the pot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include pushing the

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short leg into potting material contained in the pot when engaging the hook portion over the upper edge portion of the pot in the method of 841 as modified by 418, depending on the amount of potting material in the pot to fill up to the rim in order to allow this “pushing” step, and depending on if one wishes to further stabilize the retainer in the pot or not.

For claims 6 & 7, see the above claims 1,2,4,5.

For claim 8, in addition to the above, 418 teaches the retainer stem having an upper end portion bent outwardly of the lower stem portion for fitting around the adjacent portion of the pot band (see fig. 2 at refs. 21,23). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an upper end portion bent outwardly of the lower stem portion for fitting around the adjacent portion of the pot band as further taught by 418 on the retainer of 841 as modified by 418 in order to further provide stability to the pot by contouring the retainer to the outline of the pot.

For claim 9, see the above claims 1,2,4,5, especially teaching of fig. 3 of 418.

For claim 10, 841 as modified by 418 (emphasis on 841) teaches the stem terminating in a lower end (at ref. 14) to penetrate the ground. As for the hook portion with free end/leg, see claim 1.

For claims 12 & 13, see claim 1, especially teaching of fig. 3 of 418.

Response to Arguments

3. Applicant's arguments with respect to claims 1-10,12,13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

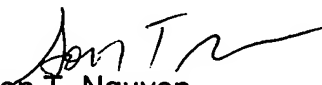
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Fri from 9:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Son T. Nguyen
Primary Examiner
Art Unit 3643

stn